IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

FAO (Ord.) 387 of 2000.

Date of decision November 2, 2007.

Smt. Nirmal Rani & others ….Appellants.

Versus

Smt. Kaushalya Devi and others ….Respondents.

Coram

The Hon'ble Mr.Justice Dev Darshan Sud, J.

Whether approved for reporting?[1]

For the appellants: **Mr. Rahul Mahajan, Advocate.**

For the Respondents: **Mr. Ramakant Sharma, Advocate.**

Dev Darshan Sud, J. (Oral).

This appeal has been preferred by the plaintiffs who were the appellants before learned trial Court against the order passed in appeal and against the order of review dated 19.5.2000 preferred in that appeal.

Brief facts of the case are that the plaintiffs herein instituted a suit against the respondent – defendants claiming damages to the

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[1] *Whether reports of Local Papers may be allowed to see the judgment?*

extent of Rs.1,99,000/- on the allegations that the respondents had beaten up plaintiff Nirmal Rani and inflicted serious injuries on her person.

The suit was resisted by the respondents. After trial, learned trial Court found that the allegations made by the plaintiffs were not established and the suit was accordingly dismissed. An appeal was preferred by the plaintiff before the learned District Judge against the judgment and decree. The appeal was disposed of with the direction that the learned trial Court would determine as to whether the correct Court fee had been affixed on the damages claimed by the plaintiff. This direction was given as an application under Order 7 Rule 11(c) of the Code of Civil Procedure read with Section 10 of the Court Fee Act had been moved by the appellant-defendants on 25.5.1993 on which no findings had been given. The learned Appellate Court proceeded to hold that even if the defendants did not appear after filing of the application, it was the duty of learned trial Court to have ascertained as to whether proper Court fee had been affixed or not. A review application was preferred by the plaintiff- appellants against this

order which was also dismissed by learned appellate Court. The plaintiffs are now in appeal before this Court.

In the suit, the plaintiff – appellant had calculated damages to the extent of Rs.1,99,000/-. It was averred that Court fee amounting to Rs.3320/- is being affixed in the suit and the balance Court fee would be affixed on the quantum of damages awarded by the trial Court.

The order passed by the learned District Judge in the review application suffers from no illegality. The application for review as filed by the plaintiff does not disclose any ground in consonance with Order 47 Rule 1 and Section 114 of the Code of Civil Procedure to invoke the review jurisdiction of the Court. The petition for review has been rightly rejected by the learned District Judge. The record shows that the plaintiff had raised a number of grounds in the appeal before the learned District Judge challenging interalia the findings arrived at by learned trial Court.

The matter could not have been remanded to the learned trial Court solely on the ground that a determination of the Court fee payable should have

been made by learned trial Court. If the Court fee was deficient, learned appellate Court could have ordered the deficiency to be made good and then proceeded with the appeal on merits. The order to this extent of remanding the entire case cannot be sustained.

In the facts and circumstances of the case, this appeal is disposed of with the following directions:

(i) That the appeal will revive before the learned District Judge, Dharamsala who will try it on merits after the proper Court fee had been affixed;

(ii) He will issue notice of this appeal to the parties for their presence and then proceed with the case in accordance with law;

This appeal is accordingly disposed of. All pending application(s) shall stand disposed of.

November 2, 2007 (PC). (Dev Darshan Sud), J.